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Martin Whitfield MSP
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Standards, Procedures and Public Appointments
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Scottish Parliament
EDINBURGH
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03 May 2022

Dear Convener,

SCOTTISH LOCAL GOVERNMENT ELECTIONS (CANDIDACY RIGHTS OF FOREIGN NATIONALS) BILL – STAGE 2

I remain grateful to the Committee, and to the DPLRC, for the careful scrutiny of the above Bill at Stage 1.

Ahead of the Stage 2 session, I have been reflecting on the recommendation of both Committees for greater clarity on the Scottish Ministers' functions where a candidacy rights treaty ceases to apply. We are in agreement that, where such a treaty comes to an end, the Scottish Ministers should not be able to retain candidacy rights by virtue of paragraph 3 of new schedule 6A (to be inserted by section 1(3) of the Bill), other than to avoid any adverse impact on elections in progress at the time or in respect of councillors then serving a term of office.

However, I consider that the Bill as currently drafted achieves that aim. It is clear from the context in which the Bill confers the power in paragraph 3 of new schedule 6A that the Scottish Ministers would be required to exercise the power if a candidacy rights treaty ceases to have effect. This is because the Bill is about granting candidacy rights in accordance with the UK's international obligations to do so. Accordingly, the list of countries in paragraph 1 of new schedule 6A is based on the existence of candidacy rights treaties. It is that factor which distinguishes "schedule 6A nationals" from "qualifying foreign nationals".

Paragraph 3 of new schedule 6A was framed as a power, rather than a duty, for two main reasons. Firstly, as set out in paragraph 19 of the Delegated Powers Memorandum, it was to ensure that the Scottish Ministers had some limited discretion in how and when to exercise the power, especially given that a treaty could be terminated at short notice and the removal of candidacy rights could cause significant disruption or unfairness if it were to occur when a local government election was in progress.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Secondly, it was important (given the UK-wide application of candidacy rights treaties) to ensure parity with the functions being conferred on the UK Ministers in this regard. It is worth highlighting here that the equivalent provision in the recently passed UK Elections Act is in very similar terms to the Bill:

*"The Secretary of State may by regulations remove a country from the list in Schedule 6A where the country ceases to be a party to a relevant treaty to which the United Kingdom is also a party."*¹

Following the comments by both Committees, I asked my officials to discuss with their counterparts in the UK Government the recommendation to amend paragraph 3 of new schedule 6A to make it an explicit duty. The UK Government considers that it would be preferable to maintain consistency between the Scottish and UK Bill provisions, and that converting the power into a duty would take away some flexibility in responding to any potential suspension of a candidacy rights treaty. Therefore, there appears to be a risk that modifying the provision as recommended by the Committees (for example, to replace "may" with "must") would deprive the Scottish Ministers of the same discretion in the event of a suspension of treaty rights. It would, for example, mean that the Scottish Ministers would have no option but to completely remove treaty candidacy rights in the event of a suspension (even if it were only a short-term suspension).

As a result, I am not minded to lodge such an amendment to the Bill at Stage 2. I would however be very happy to discuss the matter further with the Committee.

I have copied this letter to the Convener of the DPLRC.

Yours sincerely

GEORGE ADAM

¹ Section 203A(3) of the Representation of the People Act 1983, as inserted by Schedule 8, paragraph 11 of the as amended at Committee version of the [UK Elections Bill](#)